

December 17, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON CODE ENFORCEMENT APPEAL

SUBJECT: Department of Development and Environmental Services File No. **E0001730**

RON HENNIG
Code Enforcement Appeal

Location: 5823 – 231st Avenue Northeast

Appellant: **Ron Hennig**
5823 – 231st Avenue Northeast
Redmond, WA 98052
Telephone: (425) 898-0856

King County: Department of Development and Environmental Services,
Code Enforcement Section, *represented by*
Darren Wilson
900 Oakesdale Avenue SW
Renton, WA 98055-1219
Telephone: (206) 296-7093
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Granted

EXAMINER PROCEEDINGS:

Hearing Opened:	November 15, 2001
Hearing Closed:	December 13, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Code enforcement
- Uniform Fire Code
- Uniform Building Code

SUMMARY:

The appeal is GRANTED.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Notice and order served.** This case concerns a pile of stumps on the Hennig property. Regarding that pile of stumps the Department of Development and Environmental Services (“Department” or “DDES”) served upon property owner Ron Hennig (Appellant) a notice of King County code violation; civil penalty order; abatement order; notice of lien; duty to notify (“Notice and Order”) on August 1, 2001. The subject Hennig property is located at 5823 – 231st Avenue Northeast in unincorporated King County.¹ The notice and order cites “an accumulation of clearing debris . . . which has created a harborage for rodents and a fire hazard . . .” It orders the Appellant to “remove all stumps, brush and debris from the premises and revegetate all disturbed areas by October 1, 2001. That deadline was stayed by the appeal. It would have fallen approximately sixty days following service.

The notice and order cites as its authority, the following:

- KCC 21.A.32.230.A, regarding prohibited open storage
- KCC 21.A.32.230.B, regarding storage which constitutes a fire hazard
- Uniform Housing Code (UHC) Chapter 4, regarding inspection and enforcement authority
- UHC Section 1001.2.12, regarding infestation of insects, vermin or rodents as determined by the health officer
- UHC Section 1001.9, regarding fire hazard
- UHC Section 1001.11.11, regarding hazardous or insanitary premises
- KCC 10.04.020.Q.3, defining “construction, demolition and land clearing (CDL) waste” and “land clearing waste”
- KCC 10.04.080, regarding “littering and unlawful dumping.”
- Uniform Fire Code (UFC) Section 1103.2.4, concerning rubbish and rubbish containers.

¹ Tax assessor parcel no. 152506-9067.

2. **Appeal filed.** The Appellant's notice of statement of appeal is entered as exhibit no. 3. Appellant Hennig argues that the stump pile of concern causes neither a fire nor rodent problem; that other county "experts" have reviewed the site and found no issues of concern; and that King County previously agreed to placing the stump pile where it is now located. Finally, the Appellant asks for equitable relief based upon economic hardship.
3. **General findings.** The subject property comprises 3.57 acres and is "L" shaped. Although it was subdivided as a single lot, it is divided by a 60 foot wide ingress/egress and utility easement. From this curious circumstance comes a side argument between the Department and the Appellant regarding whether the subject property comprises one or two lots. In spite of the dividing presence of the access and utility easement, it is recorded as a single lot.

The stump pile of concern, called a brush pile by the Appellant, is located on one leg of the "L"; the Hennig residence is located at the end of the other leg of the "L". Except for the cleared area accommodating the Hennig residence, access drive and yard area, the subject property is heavily wooded with conifers and under story. The stump pile at issue resulted from the clearing necessary to create access, yard and building pad. Neighboring property owner Kaufman, whose backyard view includes the stump pile nestled among woods and under story, complains that the area hosts an excessive number of rats and that the stump pile provides rat harborage. Kaufman states that the rat population of the area has increased since Appellant Hennig cleared a portion of his property, thereby creating the stump pile² in 1998.

The Department contends that the stump pile is 30 feet tall, while providing a photograph which suggests a lesser height. Redmond Fire Department Inspector Mark Pease estimated the stump pile to be 8-10 feet tall and considered it to be "very small". Complainant photographs show a lawn chair poised atop the pile. Exhibit no. 6. More recent photographs do not. Exhibit no. 4.

4. **Open storage.** KCC 21.A.32.230.A states:

It is unlawful for any person to keep, maintain or deposit on any property in the County a public nuisance including, but not limited to the following:

- A. Open storage of rubbish or junk including, but not limited to refuse, garbage, scrap metal or lumber, concrete, asphalt, tin cans, tires and piles of earth, not including compost bins.

² The Appellant objects to the Department's use of the term "slash pile" in post hearing documents, noting that the Department had not earlier used that term. *The American Heritage Dictionary of the English Language, Third Edition* (1992) in part defines "slash" as "branches and other residue left on a forest floor after cutting of timber." The Forest Practices Act administrative regulations, at WAC 222-16-010 calls slash, "pieces of woody debris containing more than three cubic feet. . ." The distinction between "slash" and "stump pile" seems unimportant to this reviewer.

We cannot find that the Appellant has stored garbage, scrap metal or lumber, concrete, asphalt, tin cans, tires, or piles of earth. Regarding refuse, we turn to the American Heritage Dictionary of the English Language, Third Edition, which defines the term as “items or material discarded or rejected as useless or worthless; trash or rubbish”. In turn, the same source defines “trash” as “worthless or discarded material or objects; refuse or rubbish”, and “something broken off or removed to be discarded, especially plant trimmings.” Finally, the same source defines rubbish as “garbage” or as “worthless material”.

5. **Fire hazard.** KCC 21A.32.230.B states the following:

It is unlawful for any person to keep, maintain or deposit on any property in the County a public nuisance including, but not limited to the following:

A. . . .

B. Combustible material likely to become easily ignited or debris resulting from any fire which constitutes a fire hazard, as defined by the Uniform Fire Code as adopted by the County pursuant to KCC 17.04.010.

The Department has not provided a copy of the “fire hazard” definition contained in the Uniform Fire Code, but has provided a definition of “combustible vegetation” which reads as follows:

UFC 1103.2.4 Combustible vegetation. Cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the [fire] chief to be a fire hazard. When the chief determines that total removal of growth is impractical due to size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.

The Uniform Housing Code, also cited by the Department defines fire hazard as follows:

UHC 1001.9 Fire hazard. Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the Chief of the Fire Department, is in such a condition to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause shall be considered substandard.

The Department has provided no evidence that the stump pile actually constitutes a fire hazard. On October 30, 2001, Mark Pease, representing the Redmond Fire Department concluded that the stump pile, “is not in any way a fire hazard . . . and poses no risk to neighboring property.” Exhibit no. 11.

6. **Solid Waste.** KCC 10.04.020.Q.3 defines “construction, demolition and land clearing (CDL) waste” as meaning:

. . . any recyclable or non-recyclable waste that results from construction, remodeling, repair or demolition of buildings, roads or other structures, or from land clearing for development, and requires removal from the site of construction, demolition or land clearing. . . . CDL waste includes, but is not limited to the following listed materials:

1. . . .
2. . . .
3. “Land clearing waste” includes natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, associated dirt and sand, tree bark, sod and rocks.

KCC 10.04.080 regulates “littering and unlawful dumping”:

It is unlawful for the owners or occupants of private property to deposit or accumulate or to permit the deposit or accumulation of refuse upon such private property; provided however, that this shall not prohibit the storage of garbage, rubbish, or recyclable materials in public or private receptacles, or in solid waste containers or other approved receptacle, or in securely tied bundles when such receptacles or bundles are for immediate or approved periodic disposal.

KCC 10.04.080.D contains additional language citing exceptions to the rule, including “the use of a compost pile or bin... if the use and maintenance thereof is in such a manner as to prevent the attraction, breeding and/or harboring of insects and rodents. Whether the stump pile harbors rodents will be addressed in finding no. 7, below. The Department emphasizes the term “accumulate”, arguing that the stump pile constitutes an *accumulation* of refuse. The citation cannot apply to an accumulation of “recyclable materials” because KCC 10.04.020 defines recyclable” as meaning:

. . . any material that can be kept out of or recovered from solid waste and the resources therein be transformed and/or reused including, but no limited to, mixed paper, newsprint, cardboard, aluminum, glass, plastics, chemicals, oil, wood, compostable organics (food and yard debris), ferric metal, and in-organics, rubble and inner material.

Clearly, the code definition of “recyclables” does not include stump piles. Nor, for obvious reasons, can a stump pile be regarded as “garbage”. *Although the Department cites the CDL definition, it does not cite as authority any regulatory provision addressing CDL.*

7. **Rodents and insanitary (sic) premises.** Uniform Housing Code addresses rodent infestation in this way:

UHC 1001.2 inadequate sanitation. Buildings or portions thereof shall be deemed substandard when they are insanitary. Inadequate sanitation shall include, but not be limited to the following:

. . .

12. Infestation of insects, vermin or rodents as determined by the Health Officer.

UHC 1001.11 Hazardous or insanitary premises. The accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials, and similar materials or conditions on a premises constitutes fire, health or safety hazards that shall be abated in accordance with the

procedures specified in Chapter 11 of this code.

UHC 1001.2 applies to “buildings or portions thereof”. It does not apply to yards or forested properties. UHC 1001.11 declares that an accumulation of weeds or vegetation constitutes a fire, health or safety hazard. This provision appears to conflict with other authorities cited in this review which defer that judgment to an inspecting health officer or fire department.

The preponderance of the evidence supports a finding that the stump pile does not create any particular rat harborage or unsanitary condition distinct from the woods and landscaping prevalent in the neighborhood. The evidence includes the following:

- Two rodent specialists have visited the subject property and concluded that the stump pile presents no special problems.
- The letters and video taped testimony of these two rodent specialists—one, a Ph.D. biologist—indicate that the significant prevalence of English ivy in the neighborhood, on the complainant property and elsewhere, provide a comparable or greater harborage opportunity for rodents.
- Rat baiting results in the general vicinity do not distinguish the stump pile from the general rat incidence distribution pattern of the broader area.
- Jeffery S. Calkins of Townsend Pest Control indicates that shelter or harborage alone cannot increase rat population unless food is also available. Neighboring property owners typically provide food by feeding their pets outdoors, and by bird feeding. Mr. Calkins concedes that the stump pile may harbor rodents, but removal of the stump pile could disperse the rodents to the surrounding area. He recommends rodent baiting. Exhibit nos. 5b and 10.
- Entomologist Terry Whitworth, Ph.D., of Whitworth Pest Control, Inc., agrees with Calkins. The primary rodent limiting factor is food supply. Rodents tend to thrive where people feed wildlife and pets outdoors, or around homes with gardens or fruit trees where rodents find a ready food supply. He also agrees that, conceptually, the stump pile provides harborage for hiding places for rodents, but notes that they can hide “almost anywhere”, including rockeries, brush and berry patches, under garden sheds and in crawl spaces, compost piles and ivy. This neighborhood has several substantial ivy growth areas integrated with landscaping. Exhibits nos. 5a and 10.

The Department offers no evidence which would contradict the Appellant’s experts. Complainant Kaufman offers photographs of rats, alive and dead.

8. **Reconstructed hearing record.** Approximately five minutes of the tape recording of this proceeding, or roughly three percent of the hearing time, was inadvertently erased (recorded over). The parties agreed to substitute the written summaries entered in the record as exhibit nos. 18 and 19. Neither party objected to the other’s summary, except as indicated in footnote no. 2.

CONCLUSIONS:

1. The stump pile is not a fire hazard. See finding no. 5.

2. Although a stump pile may provide shelter for rodents, this hearing record contains no evidence that this stump pile is the causative factor for the rat problems experienced in this neighborhood. The preponderance of evidence shows that other properties in the area stack wood outdoors, grow ivy (thereby providing rat harborages of comparable function), pet feeding, bird feeding, and so on. The preponderance of the evidence, including in particular the evidence summarized by finding no. 7, above, compels a conclusion that the stump pile is indistinguishable from the surrounding forested area and sheltering landscape features in the neighborhood with respect to rat harborage.
3. The hearing record contains no evidence that the stump pile is unsanitary.
4. The notice and order citation of Uniform Housing Code Chapter 4 is too broad in general to be constitutionally enforceable.
5. The KCC Title 10 citations of authority contained in the notice and order *define* CDL but do not *regulate* it. If there is authority to require removal of stumpage from the premises contained in the solid waste code (KCC Title 10) it has not been cited in the notice and order or in this review.
6. The testimony of record, particularly that of complainant Kaufman, suggest that the principle problem is that the stumpage pile is an eyesore in the judgment of the Kaufmans. The hearing examiner has no authority to rule upon eyesores. Appellant Hennig could, for instance, paint the stump pile day-glow orange or yellow and the Examiner would have no authority to require its removal or modification. However, that probably is not a good idea, nor was the chair that sat atop the pile. Accurately or not, it appears spiteful. Since there is plenty of ivy in the neighborhood, perhaps Mr. Hennig could plant ivy around and within the stump pile in order to enhance its attractiveness. The record shows that several property owners in the area believe ivy to be attractive. The experts of record uniformly believe that baiting in the area, not only on the Hennig property but other properties, is a good idea. This Examiner, however, has no authority to require or monitor a baiting program. Mr. Hennig and Mr. Kaufman may want to consult the Health Department and experts such as Mr. Calkins and Dr. Townsend. The review record, however, contains no citation of authority for the Examiner to require rat baiting, particularly considering the findings and conclusions above.
7. KCC 23.32.050 provides criteria for waiving civil penalties. None of them are based on economic hardship (as argued by Appellant Hennig). That issue is no longer relevant, however, considering the findings and conclusions above.

DECISION:

The appeal of Ron Hennig is GRANTED.

ORDER:

The Department's August 1, 2001 notice and order is void. No civil penalties have accrued.

ORDERED this 17th day of December, 2001.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 17th day of December, 2001 by certified mailing to the following parties:

Ron Hennig
5823 – 231st Ave. NE
Redmond, WA 98052

TRANSMITTED this 17th day of December, 2001, to the parties and interested persons of record:

Ron Hennig
5823 - 231st Ave. NE
Redmond WA 98052

Kris Kaufman
22908 NE 57th St.
Redmond WA 98053

Roger Bruckshen
DDES/BSD
Code Enforcement Section
MS OAK-DE-0100

Elizabeth Deraitus
Code Enforcement Supervisor
DDES/
OAK-DE-0100

Heather Staines
DDES/BSD
Code Enforcement-Finance
MS OAK-DE-0100

Chris Tiffany
DDES/LUSD
Site Development Services
OAK-DE-0100

Darren Wilson
DDES/BSD
Code Enforcement Section
OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 15, 2001 PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: E0001730

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Darren Wilson. Participating in the hearing and representing the Appellant was Ron Hennig. Chris Tiffany and Kris Kaufman also participated in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to Hearing Examiner
- Exhibit No. 2 Copy of Notice & Order issued August 1, 2001
- Exhibit No. 3 Copy of Appeal received August 17, 2001
- Exhibit No. 4 Photographs (5)
- Exhibit No. 5 Letters from consultants
 - a. Whitworth Pest Control, Inc. dated March 23, 2001
 - b. Townsend Pest Control, dated March 16, 2001
- Exhibit No. 6 Photographs (4)
- Exhibit No. 7 Photographs (3) from Mr. Kaufman
- Exhibit No. 8 Withdrawn
- Exhibit No. 9 Map showing bate stations
- Exhibit No. 10 Video cassette
- Exhibit No. 11 Letter from Mark Pease, Redmond Fire Dept, to Ron Hennig, dated October 30, 2001
- Exhibit No. 12 Letter from Roselma Quinn, to Hearing Examiner, dated November 12, 2001
- Exhibit No. 13 Letter from Dennis McGill, to Hearing Examiner, dated 11-8-01
- Exhibit No. 14 Estimate from Snohomish Tree Service, dated 11-9-01
- Exhibit No. 15 Financial folder from Ron Hennig
- Exhibit No. 16 Portion of Uniform Housing Code
- Exhibit No. 17 Portion of Uniform Fire Codes

Entered pursuant to order of administrative continuance:

- Exhibit No. 18 Hennig chronology of events, replacing inadvertently deleted segment of taped proceedings, received December 3, 2001.
- Exhibit No. 19 D. Wilson written summary replacing inadvertently deleted segment to taped proceedings, received December 12, 2001.
- Exhibit No. 20 Letter from Examiner to parties, dated November 20, 2001, with attached summary of missing portion of taped proceedings.
- Exhibit No. 21 Notice of administrative continuance, dated December 5, 2001.
- Exhibit No. 22 Hennig objection to D. Wilson summary, dated December 13, 2001.